Filed 7/24/20 SJ Management LLC v. Castillo CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

SJ MANAGEMENT LLC, Plaintiff and Appellant, v. CHRISTINE CASTILLO et al., Defendants and Respondents.	A154394 (Alameda County Super. Ct. No. RG15784272)

This is an appeal from final judgment after a jury found plaintiff SJ Management LLC (SJ) was not entitled to any damages for harm that arose from the tortious destruction of trees on its undeveloped real property in the City of Oakland. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

SJ is a limited liability company and owner of about 25 acres of unimproved real property located at 5885 Skyline Boulevard in Oakland. Defendants are Christine Castillo and her disabled elderly mother, Beryl Hoff, the owner of real property located at 6049 Skyline Boulevard since the 1960's. Hoff resided at this location until 2011, when she moved to an assisted living facility, and Castillo, who had been granted power of attorney over her affairs, began renting it out to tenants. Defendant Ben Amini is the

owner of and resident at neighboring property located at 6037 Skyline Boulevard. Amini reached a good faith settlement with SJ prior to trial.

On September 2, 2015, SJ filed a complaint against defendants for statutory damages to real property pursuant to Civil Code section 3346 and Code of Civil Procedure section 733. According to this complaint, in or about August 2014, defendants wrongfully and without permission entered SJ's property (hereinafter, property) and cut down hundreds of mature trees, leaving a mess of cut trees and debris on the ground. SJ thereafter spent about $53,000 on tree removal and other remediation measures. Further, SJ expected to spend additional amounts in the future for stump removal and any other measures recommended by the city or its experts to prevent further property damage. Trial by jury began in March of 2018.

Undisputed evidence presented at trial revealed that, in July of 2014, Castillo and Amini agreed to share the cost to hire a general contractor, defendant Aitken & Associates, to remove a grove of eucalyptus trees which was located on undeveloped land near their property and posed a fire risk. At the time, Castillo mistakenly believed that Amini had obtained permission for the tree removal and that the property was owned by Steven Jaca. Jaca was actually a contract worker who provided maintenance for the true owner, SJ. Aitken & Associates thereafter cut down the trees without notice to or authorization from SJ and then neglected to remove all the felled trees as promised. Aitken & Associates did not answer the complaint, and a default order was entered in December 2016.

In the summer of 2014, SJ learned of the unauthorized tree cutting on the property from the Oakland Fire Department, as well as from Jaca. SJ was cited for failing to clean up and remove the felled trees by the City of Oakland and required to pay $909. To assess the extent of the mess, SJ hired

a company to fly a drone over the felled trees at a cost of $3,500. SJ then hired Jaca's company, Mountain Movers, to perform the cleanup at a cost of $43,000, plus an additional $7,566.39. Defendants offered to take care of cleaning up the tree cutting area, but SJ chose to handle the situation itself.

SJ's expert arborist, Kent Julin, testified that the reasonable value of the destroyed trees and replacement foliage was about $89,950. In addition, Julin estimated the cost to repair three damaged trees on the property to be $1,050 and the cost of installing and maintaining an irrigation system for the new plantings to be $6,800.

By the time of trial, SJ had signed a $120,000 contract with a professional tree care company for further remediation work it claimed was necessitated by the regrowth of new trees. This contract was intended to cover removal of the regrowth, stump cutting and stump poisoning to prevent further regrowth. To hold this price, SJ paid a deposit of $12,000. As of trial, this work had not been done and no start date had been scheduled.

A wealth of evidence was presented to the jury that the eucalyptus grove on the property posed a fire hazard and needed to be addressed prior to and notwithstanding defendants' tree cutting. According to Castillo, the original house at 5885 Skyline Boulevard burned down in the 1991 Oakland Hills fire when the fire came up from the same direction as this grove. SJ's expert Julin confirmed eucalyptus trees were a known fire hazard and a catalyst for the 1991 fire. Jaca acknowledged the Oakland Fire Department had conveyed to him its policy of eliminating eucalyptus trees due to their fire hazard and its desire that SJ remove them. Oakland Fire Inspector Mark Grissom testified that this particular eucalyptus grove had been ill maintained for a long time and posed a fire hazard and that its removal would protect hundreds if not thousands of area homes.

Lastly, defense expert Raymond Moritz, an arborist, testified the unauthorized cutting caused SJ no harm because the trees' location and flammability danger gave them a negative value. Defense expert Alison Teeman, a real estate appraiser, confirmed the cutting had no effect on the property's value of $5.5 million.

On March 27, 2018, the jury submitted a special verdict form in which it found that defendants entered SJ's property without permission and cut down or damaged trees, causing SJ harm. The jury then found that, although defendants' conduct was a substantial factor in causing harm to SJ, the property did not suffer a resulting reduction in value. Finally, the jury found SJ did not have a "genuine desire to repair the property for personal reasons[.]" Accordingly, the jury, per the verdict form, did not award damages.

On April 5, 2018, the trial court filed the "Judgment Based upon Jury Verdict," prompting this timely appeal.

DISCUSSION

SJ argues that the jury's no-damages verdict resulted from an inapplicable jury instruction and related special verdict form. Specifically, SJ challenges the court's giving of the following modified version of CACI No. 3903F: "To recover damages for harm to property, SJ Management, LLC must prove the reduction in the property's value or the reasonable cost of repairing the harm. If there is evidence of both, SJ Management is entitled to the lesser of the two amounts. However, if SJ Management has a genuine desire to repair the property for personal reasons, and if the costs of repair are reasonable given the damage to the property and the value after repair, then the costs of repair may be awarded even if those costs exceed the property's loss of value."

SJ does not dispute that the court's CACI No. 3903F instruction was a correct statement of the law.[1] Further, SJ does not dispute that there is no

---

[1] CACI No. 3903F states:

"3903F. Damage to Real Property (Economic Damage)

"[*Insert number, e.g.,* '6.'] The harm to [*name of plaintiff*]'s property.

"To recover damages for harm to property, [*name of plaintiff*] must prove [the reduction in the property's value/ [or] the reasonable cost of repairing the harm]. [If there is evidence of both, [*name of plaintiff*] is entitled to the lesser of the two amounts. [However, if [*name of plaintiff*] has a genuine desire to repair the property for personal reasons, and if the costs of repair are reasonable given the damage to the property and the value after repair, then the costs of repair may be awarded even if they exceed the property's loss of value.]]

"[To determine the reduction in value, you must determine the fair market value of the property before the harm occurred and then subtract the fair market value of the property immediately after the harm occurred. The difference is the reduction of value.

" 'Fair market value' is the highest price for the property that a willing buyer would have paid to a willing seller, assuming:

"1. That there is no pressure on either one to buy or sell; and

"2. That the buyer and seller know all the uses and purposes for which the property is reasonably capable of being used.]

"[To determine whether the cost of repairing the harm is reasonable, you must decide if there is a reasonable relationship between the cost of repair and the harm caused by [*name of defendant*]'s conduct. You must consider the expense and time involved to restore the property to its original condition compared to the value of the property [and [*insert other applicable factors.*]].

"If you find that the cost of repairing the harm is not reasonable, then you may award any reduction in the property's value.]" (CACI No. 3903F (2009 rev.) (2020 ed.) p. 781.)

The accompanying "Directions for Use" for CACI No. 3903F provide: "If only the cost of repair is at issue, give just the first paragraph. However, if the reasonableness of the cost of repair is at issue, then the value of the property must be considered, and all paragraphs must be included. If only diminution of value is at issue, omit the last two optional paragraphs." (Directions for Use of CACI No. 3903F, *supra*, pp. 781–782.)

one fixed standard for measuring damages to real property. It is well established that the "measure of damages for tortious injury to property, including trees, 'is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.' (Civ. Code, § 3333; see *Heninger v. Dunn* (1980) 101 Cal.App.3d 858, 861 [162 Cal.Rptr. 104] (*Heninger*).) 'Such damages are generally determined as the difference between the value of the property before and after the injury.' (*Heninger*, at pp. 861–862.) But '[d]iminution in market value . . . is not an absolute limitation; several other theories are available to fix appropriate compensation for the plaintiff's loss.' (*Id.* at p. 862.) ' "There is no fixed, inflexible rule for determining the measure of damages for injury to, or destruction of, property; whatever formula is most appropriate to compensate the injured party for the loss sustained in the particular case, will be adopted." ' (*Ibid.*) *One such alternative measure of damages is the cost of restoring the property to its condition prior to the injury, and a plaintiff may recover these costs even if they exceed diminution in value if there is a 'personal reason' for restoration.* (*Id.* at p. 863.)" (*Salazar v. Matejcek* (2016) 245 Cal.App.4th 634, 643–644, italics added.)

SJ argues, however, that the court's instruction was erroneous in this case because "[n]either appellant nor respondents put on evidence of diminution or reduction in the value of the property at trial, and appellant is therefore entitled to the reasonable costs of repairing the harm caused by respondents by the plain language of the first paragraph of CACI 3903F." According to SJ, the jury should have been allowed to award damages in

---

The trial court complied with these directions, including both paragraphs in its instruction because both the reasonableness of SJ's repair costs and diminution in property value were at issue.

" 'the amount which w[ould] compensate for all the detriment caused [by defendants' harm], whether it could have been anticipated or not,' " which SJ insists included its out-of-pocket expenses of at least $65,000. (See Civ. Code, § 3333.) SJ's arguments are misplaced.

"Trial courts in trespass actions have historically been given great flexibility to award damages that fit the particular facts of the case." (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583, 604.) When a party has presented substantial evidence to support its theory of the case, it is entitled upon request to a correct, nonargumentative instruction on that theory. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572 (*Soule*).) A party "may not complain . . . if the court correctly gives the substance of the law applicable to the case." (*Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 335.) Moreover, a "judgment may not be reversed on appeal, even for error involving 'misdirection of the jury,' unless 'after an examination of the entire cause, including the evidence,' it appears the error caused a 'miscarriage of justice.' (Cal. Const., art. VI, § 13.)" (*Soule*, at p. 574.)

Here, SJ mistakenly argues that defendants presented no evidence of diminution of value, such that the trial court erroneously instructed the jury per CACI No. 3903F that it could only award damages for repair costs if SJ proved "the amorphous 'genuine desire to repair the property for personal reasons' . . . ." Defense expert Teeman testified there was *no diminution of value* in the multimillion-dollar property as a result of defendants' tree cutting. Similarly, defense expert Moritz testified the cutting caused SJ no harm because the trees' location and flammability danger gave them a negative value. Given this testimony, the trial court had a legal basis for giving its version of CACI No. 3903F. As one reviewing court has explained,

"when a plaintiff proves damages by showing the cost of repairs it should be incumbent on the defendant to introduce evidence that the repair costs exceed the value of the property." (*Armitage v. Decker* (1990) 218 Cal.App.3d 887, 905.) Defendants here did just that. The fact that SJ declined to counter these experts' testimony with its own evidence that no diminution in value occurred does not render the court's instruction inapplicable. (*Soule*, *supra*, 8 Cal.4th at p. 572.)

SJ is also mistaken that the court "failed to acknowledge the long line of . . . authorities stating that where there is tortious injury to property proven, the measure of damages is 'the amount which will compensate for all the detriment caused thereby, whether it could have been anticipated or not.' " To the contrary, the court instructed the jury on this principle when giving a version of CACI No. 3900. The court also instructed per CACI No. 3931, "If you decide [defendants] are responsible for the original harm, [SJ] is not entitled to recover damages for harm to its property that [defendants] prove SJ Management LLC could have avoided with reasonable efforts or expenditures." Thus, while SJ insists the jury was "precluded" from awarding it damages despite finding tortious injury by CACI No. 3903F's requirement of "a genuine desire to repair the property for personal reasons," there were in fact several instructions that could have properly led the jury to award no damages, including CACI No. 3931's requirement that SJ's harm must have been unavoidable with reasonable efforts or expenditures. Substantial evidence proved the felled trees posed a fire hazard that should have been handled long before defendants' trespass. Where, as here, the jury was correctly instructed on the law and substantial evidence supports its findings, it is not our role to interfere. (See *Hobbs v. Bateman Eichler, Hill Richards, Inc.* (1985) 164 Cal.App.3d 174, 200 ["even a questionable

instruction is not a ground for reversal where the rights of the appellant were clearly stated to the jury in other instructions"].)

Accordingly, we reject SJ's instructional challenge because it rests on two flawed premises—that there was no diminution-in-value evidence or instruction on general damages principles. The trial court did not abuse its discretion because its version of CACI No. 3903F was a correct statement of law and consistent with defendants' theory and evidence.

Our rejection of SJ's instructional challenge also renders moot its related argument that the jury verdict form was improper because it required as a prerequisite to damages a finding that SJ had "a genuine desire to repair the property for personal reasons[.]" This verdict form merely tracks the language in CACI No. 3903F that we have already upheld. Accordingly, the related challenge goes nowhere.

Lastly, we reject SJ's remaining argument on procedural grounds. SJ argues that the trial court erred in dismissing defendant Aitken & Associates from the case instead of "f[inding] in favor of such defendant, and against [SJ]" because it "ripped away [SJ's] right to pursue such defendant even if [SJ] succeeds on the instant appeal, and the matter is retried." However, SJ has provided this court no reasoned argument with citations to relevant legal authority to guide its inquiry. This is a clear violation of the mandatory rules of appellate procedure. (Cal. Rules of Court, rule 8.204(a)(1)(B).) Accordingly, we deem this argument forfeited. (See *Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc./Obayashi Corp.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [reviewing court need not address the merits of appellant's theory where the appellant failed to provide any meaningful argument with citation to law or the evidentiary record].)

DISPOSITION

The judgment is affirmed.

_____
Jackson, J.

WE CONCUR:

_____
Siggins, P. J.

_____
Petrou, J.

A154394/*SJ Management LLC v. Castillo*